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**SEP 15 2003**

**OFFICE OF PETITIONS**

|                               |   |                      |
|-------------------------------|---|----------------------|
| In re Application of          | : |                      |
| Vogeli, et al.                | : |                      |
| Application No. 09/801,944    | : | DECISION ON PETITION |
| Filed: 8 March, 2001          | : |                      |
| Attorney Docket No. 00100.US1 | : |                      |

This is a decision on the papers filed on 23 July, 2003 and considered under:

- 37 C.F.R. §1.10 (a paper apparently previously sought to be filed as a renewed petition on 20 September, 2001) requesting that the above-identified application be accorded a filing date of 8 March, 2001, rather than 28 February, 2001 (as set forth on the stamped receipt card) and 18 October, 2001 (as set forth on a second Filing Receipt). 37 C.F.R. §1.10; and
- 37 C.F.R. §1.53 requesting that pages 72 through 78 be accorded a the filing date of 8 March, 2001.

NOTE:      It is noted that the mailing address utilized by Counsel/Petitioner herein is different from that of record in the Office, and further that no Notice of Change of Address is apparent of record.

If Petitioner desires to receive future correspondence regarding this application to the mailing address in Petitioner's most recent papers, the appropriate Notice must be submitted. A courtesy copy of this decision will be mailed to Petitioner.

However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

The petition as considered under:

- 37 C.F.R. §1.10 is **GRANTED** and the fee waived; and
- 37 C.F.R. §1.53 is **GRANTED** and the fee waived.

### BACKGROUND

The record indicates that:

- Petitioner Gwilym Attwell (Reg. No. 45,449) alleges that the application was deposited in US Postal Service (USPS) Express Mail service on 8 March, 2001, under Express Mail No. EL568028411US, but due to Office error, the return receipt card incorrectly reflected both the application number<sup>1</sup> and the filing date;
- after the date-stamped receipt card was returned by the Office to Petitioner with not only an incorrect file number but also an erroneous filing date of 28 February, 2001, Petitioner filed a petition on 16 April, 2001, seeking to obtain the 8 March, 2001, filing date;
- in the meantime the filing receipt was mailed on 20 July, 2001, and reflected the filing date of 8 March, 2001, and application number (09/801,944)
- as a result, the 16 April, 2001, petition was dismissed as moot on 20 August, 2001;
- however, in separate mailing on 20 July, 2001, the Office forwarded to Petitioner a Notice of Missing Parts (Filing Date Granted) addressing the unsigned oath/declaration, as well as the damaged computer-readable disk--moreover, the Notice also indicated that pages 72 - 78 of the specification (description and claims) appeared to be missing from the application, and Petitioner either could:
  - accept the filing date of 8 March, 2001, without pages 72 - 78 of the specification (description and claims) of the application, or
  - submit within two (2) months pages 72 - 78 of the specification (description and claims) of the application with a petition for its inclusion and accept the date of filing of that submission and petition;
- it appears that Petitioner may have attempted to file via USPS Express Mail (Label No.

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<sup>1</sup> Another serial number--that of 09/794,058, which was the application number for a now-patented case filed, in fact on 28 February, 2001--appears erroneously on the receipt card identified with this Express Mail number and these inventors.

EL650276866US) a second petition regarding the filing date on 20 September, 2001, however, Petitioner's file copy of that paper now submitted carries no date stamp from the Office and there is neither a date-stamped receipt card or a date-stamped copy of the Express Mail label;

- a copy of the Notice to File Missing Parts date stamped as filed with the Office on 18 October, 2001, with a finance notation of a \$130.00 petition fee (and Office finance records also reflect payment for a one- (1-) month extension of time) paid by check and accounted for on 23 October, 2001, and appears to be Petitioner's reply to the Notice with a copy of the oath/declaration and the computer readable disk;
- thereafter, a Notice of Incomplete Reply mailed on 22 January, 2002, set forth a filing date of 18 October, 2001, and indicates, *inter alia*, that the computer disk is damaged;
- as reflected by a date-stamped receipt card, Petitioner filed a reply to the Notice of Incomplete Reply on 19 February, 2002;
- the instant petition is supported, *inter alia*, by the statement of Petitioner; and:

--what is indicated to be a true copy of Express Mail label No. EL568028411US attached, with a "date in" of "3/8/01" and a USPS date stamp of "8 MAR 2001"; and

--what is indicated to be a copy of receipt card and (as noted above bearing the wrong file number and wrong filing date) and the six- (6-) page application transmittal for the instant application, both of which evidence the Express Mail label No. EL568028411US, the title of the claimed invention and the named inventors.

Further, the copy of the date-stamped receipt card (marked by the Office with the incorrect application number and filing date but properly identified by Petitioner with USPS Express Mail Label Number EL568028411US) sets forth the following items were filed among the pages of the specification (description and claims) and received by the Office:

Paper: Patent Application transmittal letter in dup.; Specification including claims and abstract pages 1-173; Unexecuted declaration; Statement to Support Filing and Submission in Accordance with 37 CFR §§ 1.821 through 1.825; paper copy of the Sequence Listing pages 1-160; Computer Readable Copy of the Sequence Listing; Check in the amount of \$4,674.00; all via express mail no." EL568028411US

Applicant(s): Gabriel Vogeli and Linda S. Wood

Title: Novel G Protein-Coupled Receptors

Because the return postcard receipt properly itemizes the contents of the application package in accordance with MPEP §503, the Office concludes that pages 72 - 78 of the specification (description and claims) were subsequently misplaced in the Office.

### CONCLUSION

Accordingly, the petition under:

- 37 C.F.R. §1.10 is **granted** and
- 37 C.F.R. §1.53 is **granted**.

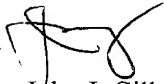
The Notice mailed on 20 July, 2001, hereby is withdrawn as to pages 72 - 78 of the specification (description and claims) as described in the specification.

Therefore, as to the instant nonprovisional application, Application No. 09/801,944, the Office of Initial Patent Examination is specifically instructed to:

- assign a filing date of 8 March, 2001; and
- issue a filing receipt specifying the filing date as that of 8 March, 2001, using:
  - Pages 1 - 71 and 79 - 173 of specification (description and claims) filed on 8 March, 2001; and
  - Pages 72 - 79 of the specification (description and claims), supplied on 18 October, 2001, with an indication on the PALM bib data sheet that 173 pages of the specification (description, claims and abstract) were present on filing.

The instant application is being forwarded to OIPE to be handled as set forth above before being forwarded for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



John J. Gillon, Jr.  
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cc:

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